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IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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IN THE MATTER OF AN APPEAL UNDER ARTICLE 14A OF THE SOLICITORS (NORTHERN IRELAND) ORDER 1976

BETWEEN:

ROBERT MURTAGH

Appellant

and

THE LAW SOCIETY OF NORTHERN IRELAND

Respondent

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Mr Hamill (instructed by Granite Legal Services) for the Petitioner
Mr Egan KC (instructed by Francis Hanna Solicitors) for the Respondent

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KEEGAN LCJ

Introduction

[1] By this Petition the appellant, pursuant to Article 14A(6) of the Solicitors (Northern Ireland) Order 1976 ("the 1976 Order"), appeals the decision of the Appellate Committee ("the Committee") of the Law Society of Northern Ireland ("the Society") dated 29 June 2023 to remove certain restrictions on his practising certificate imposed by the Society's Professional Conduct Committee ("PCC") and impose alternative conditions.

[2] The conditions, which were directed at the appellant's admitted financial mismanagement of his practice required him (i) for a period of two years to facilitate a six monthly inspection of his practice accounts, and (ii) within one year attend two courses concerning the proper maintenance of solicitors' accounts and solicitors' practice management.

Factual background

[3] The facts of this appeal are not disputed and so I set them out in brief. The appellant qualified as a solicitor in 1988 and from 1993 was the principal in a solicitor's practice known as RRM Law. In February 2019 his practice was wound up following

a petition made by Her Majesty's Revenue and Customs ("HMRC") as a result of RRM's indebtedness of £262,974.34. This led to the appellant's practising certificate being suspended, although it was reinstated the same day with restrictions and supervisory conditions attached.

[4] On 13 December 2019, the appellant was made bankrupt as a consequence of a petition lodged by a creditor under a personal guarantee given by him in respect of RRM Law. Article 15(1) of the 1976 Order automatically took effect, suspending again the appellant's practising certificate. Following this, the appellant applied to the Society's Appellate Committee of Council for a practising certificate to allow him to work as a solicitor, in the role of assistant solicitor. This application was granted on 17 December 2019, subject to restrictive terms and conditions on his practising certificate.

[5] On 19 May 2020, the Solicitors Disciplinary Tribunal ("the Tribunal") served the appellant with two applications made by the Society pursuant to the 1976 Order. These applications were heard on 24 February 2021, at which point the appellant admitted all allegations made against him. Specifically, the appellant admitted that he was:

(i) guilty of professional misconduct in that his practice was wound up following his use of substantial Crown debt;

(ii) guilty of professional misconduct in that he failed to conduct his practice to the highest professional standards and that he failed to provide a satisfactory explanation to the Society in respect of his conduct which led to the winding up petition;

(iii) guilty of professional misconduct in that he breached Article 28 of the 1976 Order (sharing of profits or fees with unqualified persons);

(iv) guilty of professional misconduct in that he contravened regulation 12A of the Solicitors Practice Regulations 1987; and

(v) contravened regulation 16(1) of the same regulations.

[6] Paragraph 7 of the Tribunal's findings also records that by letter of the 15 January 2019 the Society wrote to the appellant requesting a full explanation of the circumstances leading to the presentation of the winding up petition. The appellant's response through his then solicitor was that his practice was indebted to HMRC in the sum of £262,974.34 but that following his most recent return the true figure was £164,000. Paragraph 10 the Tribunal's findings records that the appellant had personally guaranteed a number of his practices, debts to lenders and, at paragraph 12, that the appellant's then solicitor advised that he traded as a sole trader, an LLP and as a limited company but "could not ascertain to whom the various liabilities were due."

[7] The Tribunal's findings detail that:

> "By letter dated 13th February 2019 the [Society] informed the [appellant] that he had failed to provide a satisfactory explanation with regards to the circumstances leading up to the presentation of the winding up petition with particular regards to Article 13(1)(h) of the 1976 Order."

[8] For offences (i) and (ii), referred to above the Tribunal issued an admonishment against the appellant. In respect of offences (iii)-(v), the Tribunal ordered that the appellant be restricted from practising on his own account, so that he may only practice and be employed as an assistant solicitor for a period of four years. However, in acknowledgment that the appellant had already been subject to restrictions for two years prior to the decision of the Tribunal, the Tribunal determined that the period of restriction would instead be for a period of two years from the date of the Tribunal Order. The appellant was also ordered to pay costs of the Tribunal of £1,500 and the costs of the Society of £5,747. On the same day, the appellant was unconditionally discharged from his bankruptcy as he had complied with all obligations pertaining to him.

[9] Close to the expiration of the two year restriction period (23 February 2023), the appellant applied to the Council of the Law Society via the PCC to have the restrictions removed from his practising certificate. Subsequently, by a letter dated 4 April 2023, the appellant was informed that at its meeting of 23 March 2023, the PCC had resolved not to remove the restricting terms on his certificate.

[10] At this point, the appellant appointed legal representatives and instituted proceedings before the Appellate Committee. The hearing took place on 22 June 2023, and the Committee handed down its decision on 29 June 2023. By that decision they removed the restrictions which were in place but imposed new separate terms and conditions on the practising certificate. It is this decision which is under appeal to this court.

The decision of the Appellate Committee

[11] The Committee heard the arguments of the appellant, who was represented by Mr Hamill. The principal submission advanced on behalf of the appellant was that the continued restriction on his ability to practice on his own account constituted a disproportionate interference with his ability to practice. Mr Hamill also made detailed submissions on the application of Article 14A of the 1976 Order and the failure of the PCC to adduce reasons explaining why it had decided to impose restrictions on the appellant.

[12] The Committee considered the context of the case, including the appellant's financial issues, his admissions, the previous decision of the Tribunal and other

mitigating factors such as the expiration of the sanctions imposed by the Tribunal. Accordingly, the decision expressly referred to the outstanding costs owed by the appellant on foot of the order of the Tribunal, which at that time stood at £5,347.00.

[13] The Committee also acknowledged that the appellant had "frankly and candidly" admitted his breaches. The Committee noted the submissions advanced by Mr Hamill highlighting the following mitigating features: that no other complaint had been made regarding the appellant during his 30 years of practice prior to the disciplinary proceedings; that no client monies had been affected; that the bankruptcy had been discharged with no objection from the Society; and that the two-year restriction period imposed by the Tribunal had expired. However, the Committee considered the financial management of the appellant's previous practice as of relevance, noting:

> "The Appellate Committee consider that the operation of a law practice in circumstances where substantial sums became due to the Crown for self-assessments, for Capital taxes and for VAT is a serious matter and weighs heavily in balancing of interests in terms of protection of the public and the interests of the appellant."

[14] In addition, the Committee paid explicit regard to the appellant's financial management as a principal in a firm. The Committee noted that the Tribunal below them had imposed an admonishment and no more serious sanction. On consideration, the Committee held that in balancing the protection of the public and the interests of the solicitor, it was no longer appropriate for the appellant to be restricted from practising on his own account, or to be subject to supervision of a person approved by the Law Society. They set out their reasons in coming to this conclusion.

[15] Therefore, the Committee also considered that the financial irregularities giving rise to the Inland Revenue bankruptcy petition taken alongside the evidence of how the appellant conducted his practice before the insolvency were serious matters that had to be addressed. In addition, they noted that the appellant was not initially forthcoming about his practice, and that the non-payment of Crown debt while operating a practice when the appellant was still a sole principal needed to be balanced against the appellant's entitlement to practise as a principal once again.

[16] Accordingly, while removing the practice restrictions, the Committee found that it was necessary to subject the appellant to supervisory measures and conditions. In this regard the Committee made the following key finding:

> "There is no evidence yet that the Appellant in recommencing operations as a principal will abide by the financial obligations with which all businesses must comply. Until a track record of good financial conduct is

> established, the Appellate Committee consider that on balance the need for public protection outweighs the individual interests of the Appellant. Therefore […] the appellant must be subject to a measure of supervision and conditions. The Appellate Committee consider such supervision and conditions are proportionate having regard to the past track record in financial matters."

[17] As such, the Committee issued the following decision:

> Accordingly, the Appellate Committee have decided that, if and whenever the Appellant commences practice on his own account or as a principal in private practice:
>
> > '1. for a period of 24 months after commencing work as a principal or on his own account, the Appellant must facilitate an inspection every 6 months by accountants nominated by the Society or employed by the Society with a view to confirming that all Crown debt is being discharged when due, that appropriate financial records are being maintained, and that the Appellant's business in which he is a Principal is being conducted within appropriate financial limits imposed by a Bank or other lender and, in addition,
> >
> > 2. the Appellant must within 12 months after commencing work as a principal or on his own account attend both the course in Solicitors Accounts Regulations for bookkeepers and solicitors and the Practice Management course for assistants who have become principals. These two courses are considered relevant to ensuring the Appellant has up to date and appropriate awareness of relevant financial and accounting regulations and that the Appellant receives the same training as other assistants who become Principals.'"

[18] In reaching this decision, the Committee expressly stated that the above conditions met the tests of proportionality, balancing the interests of the public and the appellant.

The grounds of challenge

[19] The appellant has mounted the following grounds of challenge, which overlap to some degree:

(a) That the imposition of conditions was an unreasonable, unnecessary and disproportionate interference with the appellant's right to practise his profession unrestricted;

(b) That, in having recourse to the financial management of the appellant's previous practice, the Appellate Committee acted on an unlawful basis;

(c) That the Appellate Committee failed to have proper regard to the principle of proportionality;

(d) That the Appellate Committee failed to give proper reasons for its decision;

(e) That the Appellate Committee took immaterial considerations into account in arriving at its decision;

(f) That the Appellate Committee failed to fully and properly engage with the appellant's submissions;

(g) That the Appellate Committee failed to have adequate regard for the Tribunal's findings; and

(h) That the process was procedurally unfair.

[20] Thus, the appellant maintains that the imposition of the conditions has inhibited his ability to obtain employment at a remuneration level reflective of his experience. He, therefore, asks this court by way of remedy to:

(i) Remove all remaining conditions imposed on his Practising Certificate; and

(ii) Award the costs of this petition.

The legal framework and relevant case law

[21] The statutory right to appeal decisions of the Society, in this case acting through the Appellate Committee, is contained in Article 14A(6) of the 1976 Order which, provides:

> "(6) A solicitor aggrieved by a decision of the Council under paragraph (1) may, within one month from the date on which notice of that decision is served on him, appeal to the Lord Chief Justice who may—

(a) affirm or revoke the decision;

(b) give any direction which could have been given by the Council under paragraph (1)."

[22] The respondent rightly points out that the right of appeal under Article 14A(6) is not limited to any particular grounds. It is also silent on whether the appeal is by way of review or re-hearing. It is submitted by the respondent, that in the context of decisions made by professional regulatory bodies, the difference between a review and a rehearing is thin. Thus, a review in this context is not to be equated with judicial review; it is broader and will engage the merits of the appeal (see *Dupont de Nemours & Co v ST Dupont* [2006] 1 WLR 2793 at para [94]).

[23] In similar vein, the respondent highlighted that an appeal by way of re-hearing is not a de-novo hearing where the court hears witnesses giving evidence again (see *Cheatle v GMC* [2009] EWHC 645 (Admin) at para [12]); and whether the case is conducted by way of review or re-hearing, for both types of appeal, the authorities establish that appropriate respect should be given to the decision of the lower court. Notwithstanding the similarity between the two types of appeal, the respondent submits that, absent the requirement for a re-hearing, the appeal should be by way of review of the decision.

[24] This question has been addressed in a broadly similar situation in this jurisdiction by Carswell LCJ in *Re A Solicitor* [2001] NIQB 52. In that case, the solicitor was adjudicated as bankrupt on foot of a statutory demand made by HM Customs and Excise. The Disciplinary Tribunal found that he had failed to conduct his practice to the highest professional standards, but no professional misconduct finding was made against him. The solicitor was refused a practising certificate by the Registrar; he appealed to the Council of the Law Society who granted him a restricted certificate and then appealed to the Lord Chief Justice under Article 17A(2) of the 1976 Order seeking the removal of the restriction. Article 17A deals with "Applications for issue of practising certificate freed from terms and conditions."

[25] Pausing there, it is instructive to note that the right of appeal under Article 17A(2) is expressed in identical terms as those under Article 14A(6) and therefore is analogous to the present circumstances.

[26] Carswell LCJ, relying on a previous decision taken in respect of appeals under Articles 5 and 6 of the 1976 Order in *Re CH* [2000] NI 62, opined:

> "I am of opinion that I should approach the appeal as a rehearing, with similar freedom to review the findings of fact and draw inferences from them. At the same time, I think that I should give substantial weight to the considered conclusions of the Law Society ...

> I propose to adopt this approach, retaining the freedom to reach my own conclusions and not starting with any presumption that the Society's views are correct, but recognising as a matter of common sense that they are founded on the collective experience of practitioners and constitute evidence to which I may have regard in determining the issue for myself. If the matter is approached in this way, the requisite independence and impartiality of the decision-making is preserved."

[27] In a later case, *Solicitors (Northern Ireland) Order 1976, Re In the matter of a Solicitor* [2014] NIQB 46, Morgan LCJ considered the approach of Carswell LCJ. In that case, the Tribunal ordered that the appellant be restricted from practising on his own account and permitted him to work in partnership only with a solicitor of at least seven years post-qualification experience. The appellant's sanction was prompted by the fact that the Society had become aware that a bankruptcy petition for unpaid rates had been issued against the appellant. A key issue before the court in the aforementioned case was the appropriate weight to be afforded to the conclusions of the Tribunal.

[28] An important feature of this case is that it concerned an appeal to the decision of the Disciplinary Tribunal pursuant to Article 53(2)(a) of the 1976 Order, rather than an appeal to the refusal to remove restrictions on a practising certificate. Notwithstanding the difference in context between the two cases Morgan LCJ adopted the position above expressed by Carswell LCJ stating that,

> "… The Society accepts that *Re A Solicitor* is authority for the proposition that in such a case there is no presumption that the Society's view was correct. The court should, of course, as a matter of common sense recognise the weight to be given to the collective experience of the practitioners involved in making the decision.
>
> In an appeal from the Tribunal issues of protection remain relevant considerations. To these must be added the punishment of misconduct and the deterrence of repetition by others. Although a specialist tribunal is entitled to have respect paid to its views, I do not accept that there is any greater respect to be paid to the views of the Tribunal in respect of punishment and deterrence than there is in respect of protection. Such issues are commonly issues which a court is well placed to determine. I consider, therefore, that I should adopt the position expressed by Carswell LCJ in *Re A Solicitor* when giving weight to the Tribunal's decision." [emphasis added] (paras [20]-[21)

[29] Although Morgan LCJ was addressed on the specific issue of the weight to be given to the Tribunal's decision (and not specifically whether the appeal is to be conducted by way of review or re-hearing), his approach on the scope of an appeal in this context is instructive. I accept, as already outlined by the respondent, that the gap between a review or re-hearing is narrow in this area. Furthermore, it is important to note that the appellant raised no objection to consideration of the case by way of review. Nor was the relevant test to be applied to an appeal of this nature disputed between the parties.

[30] I was taken to the test which is expressly set out in the England and Wales Civil Procedure Rules at 52.21(3):

> "(3) The appeal court will allow an appeal where the decision of the lower court was—
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> (a) wrong; or
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> (b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court."

[31] There being no dispute as to the applicability of this test I will adopt this approach.

[32] As I have said whether this court conducts this case by way of review or re-hearing is of little practical import. In any event, the court has the benefit of clear instruction and guidance on the appropriate level of respect to be afforded to the decision-maker both from this jurisdiction and in the string of jurisprudence highlighted by the respondent.

[33] In particular, the respondent draws in aid appeals of the Privy Council and the England and Wales High Court, from analogous decisions of professional regulatory bodies, which indicate the level of respect to be afforded to the decision-maker in this context. For instance, in *Ghosh v The GMC* [2001] UKPC 29, which concerned an appeal by registered medical practitioners from decisions of the General Medical Council Professional Conduct Committee, the Privy Council provided the following guidance:

> "Practitioners have a statutory right of appeal to the Board under section 40 of the Medical Act 1983, which does not limit or qualify the right of the appeal or the jurisdiction of the Board in any respect. The Board's jurisdiction is appellate, not supervisory. The appeal is by way of a rehearing in which the Board is fully entitled to substitute its own decision for that of the Committee. The fact that the appeal is on paper and that witnesses are not recalled makes it incumbent upon the appellant to demonstrate that

some error has occurred in the proceedings before the Committee or in its decision, but this is true of most appellate processes.

It is true that the Board's powers of intervention may be circumscribed by the circumstances in which they are invoked, particularly in the case of appeals against sentence. But their Lordships wish to emphasise that their powers are not as limited as may be suggested by some of the observations which have been made in the past. In *Evans v General Medical Council* (unreported) Appeal No 40 of 1984 at p. 3 the Board said:

> 'The principles upon which this Board acts in reviewing sentences passed by the Professional Conduct Committee are well settled. It has been said time and again that a disciplinary committee are the best possible people for weighing the seriousness of professional misconduct, and that the Board will be very slow to interfere with the exercise of the discretion of such a committee. … The Committee are familiar with the whole gradation of seriousness of the cases of various types which come before them, and are peculiarly well qualified to say at what point on that gradation erasure becomes the appropriate sentence. This Board does not have that advantage nor can it have the same capacity for judging what measures are from time to time required for the purpose of maintaining professional standards.'

For these reasons the Board will accord an appropriate measure of respect to the judgment of the Committee whether the practitioner's failings amount to serious professional misconduct and on the measures necessary to maintain professional standards and provide adequate protection to the public. But the Board will not defer to the Committee's judgment more than is warranted by the circumstances. The Council conceded, and their Lordships accept, that it is open to them to consider all the matters raised by Dr Ghosh in her appeal; to decide whether the sanction of erasure was appropriate and necessary in the public interest or was excessive and disproportionate; and in the latter event either to substitute some other penalty

> or to remit the case to the Committee for reconsideration."
> (para [34]).

[34] The judgment of the Privy Council has been endorsed and adopted in the solicitors' regulatory context in *Langford v Law Society* [2002] EWHC 2802 (Admin) (see paras [14]-[15]).

[35] Therefore, the following principle may be distilled from the case law – an appropriate level of respect is to be given to the decision of the Committee but that does not prevent the appellate court, in this context, from engaging with the merits and reaching its own conclusion. This is also consistent with the approach adopted by Carswell LCJ and Morgan LCJ discussed above and is the approach I adopt.

Consideration

[36] The appellant requests that this court should make an order revoking all remaining conditions on his right to practise in accordance with Article 14A(6) of the 1976 Order. Alternatively, it suggested that should the court find the impugned decision deficient on one of the aforementioned grounds of challenge, the court retains the power to remit the case to the Committee for reconsideration.

[37] Whilst accepting that, as a matter of general principle the appellate court retains such a discretion to remit cases, the respondent makes the point that it is not entirely clear whether that power exists under Article 14A(6). However, it is a well-established principle that appellate courts retain the residual power to remit cases back to the decision-maker for reconsideration, in a broad range of contexts. Whilst acknowledging the issue nothing was put to me to suggest that this orthodox remedy is unavailable in the instant case. In any event, for reasons I will give the issue does not in fact arise in this case.

[38] The main provision under scrutiny is Article 14A of the 1976 Order. Article 14A permits the imposition of terms and conditions on current and subsequent practising certificates.

[39] The relevant parts of Article 14A read:

> "14A.—(1) Subject to the provisions of this Article, the Council may in the case of any solicitor direct that—
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> (a) his practising certificate for the time being in force (his "current certificate"); or
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> (b) his current certificate and any subsequent practising certificate issued by the registrar to the solicitor,

shall have effect subject to such terms and conditions as the Council think fit.

(2) The power to give a direction under this Article in the case of any solicitor shall be exercisable by the Society at any time during the period for which his current certificate is in force if—

(a) in the event of an application for a practising certificate being made by him at that time, Article 13 would have effect in relation to him by reason of any such circumstances as are mentioned in subparagraph (e), (g), (h), (hh), (i) or (j) of paragraph (1) of that Article;

(b) a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989; or

(c) Schedule 1 applies in relation to him, by virtue of any provision of this Order."

[40] The appellant submits that only Article 14A(2)(a) is engaged in this case. As is made clear by Article 14A(2)(a), the power to impose restrictions or conditions is only exercisable where the relevant provisions referred to in Article 13(1) are in play. Article 13 provides for circumstances where an application for a practising certificate might be refused and is not centrally concerned with the power to impose terms and conditions on practising certificates; that power is entirely within the compass of Article 14A.

[41] Before the Committee, the appellant submitted that the only matters which may be said to apply to his case are Article 13(1)(e) (failure to pay a fine, penalty or costs under the Order) and 13(1)(k) (the appellant is a discharged bankrupt). The respondent's position, however, was that Article 13(1)(h) (a failure to give an explanation of any matter relating to conduct) is also engaged and applies to the appellant's circumstances. It is worth reproducing these three sub-provisions below:

"(e) where he applies for a practising certificate while any fine, penalty or costs imposed upon or ordered to be paid by him under this Order remain unpaid; or

[…]

(h) where, having been invited by the Society to give an explanation in respect of any matter his conduct and having failed to give the Society such an explanation as

appears to them to be satisfactory, he has been notified in writing by the Society that he has so failed;

[…]

(k) where he has been adjudged a bankrupt and discharged or a composition or scheme proposed by the solicitor has been approved under Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989."

[42] I will now deal with specific grounds of appeal, out of their alphabetical sequence to address the issues by the order in which they arise which is hopefully a more comprehensible way of explaining my decision.

Conclusion Grounds (b) and (e): The Appellate Committee acted on an unlawful basis and the decision of the Appellate Committee was based on immaterial considerations

[43] Dealing with the first issue, the appellant submits that the Committee acted on an unlawful basis by imposing conditions for reasons not expressly provided within the relevant Article 13 provisions. The appellant correctly observes that ability to exercise the discretion to impose conditions under Article 14A is limited to when certain provisions identified by Article 14A(2)(a), and contained within Article 13(1), are engaged. However, the appellant takes issue with the Committee's reliance on the financial management issues; it is argued that these are referred to "in a general way" and are not linked to any particular provision of Article 13(1) which would engage their discretion to impose conditions. As a result, it is contended that the appellant's disciplinary history and related matters were immaterial/irrelevant considerations which the Committee should not have had regard to.

[44] Two Article 13(1) provisions are identified by Mr Hamill as relevant to the appellant's circumstances. The first is Article 13(1)(k). As Mr Hamill accurately points out, this provision is not captured by Article 14A(2)(a). Therefore, it is contended that the only statutory basis upon which the Committee were entitled to impose terms and conditions on the appellant's practising certificate is Article 13(1)(e).

[45] On this issue, the appellant accepts that there is an outstanding liability in respect of the costs owed to the Society which were awarded by the Tribunal. However, the appellant submits that in light of the modest sum owed, the Committee should have decided not to impose conditions on the appellant's practising certificate.

[46] The respondent identifies two statutory bases on foot of which the discretion to impose conditions may be exercised in the instant case. These are Article 13(1)(e) and 13(1)(h). The respondent argues that the decision paid express regard to Article 13(1)(e). Although Article 13(1)(h) was not expressly cited, the Committee clearly had regard to the findings of the Tribunal and in particular its finding that the appellant had failed, having been invited by the Society, to give a satisfactory explanation in

respect of the circumstances leading to the winding up petition. The respondent refers to para [105] of the Tribunal's findings, wherein it is recorded that:

> "By letter dated 13th February 2019 the [Society] informed the [appellant] that he had failed to provide a satisfactory explanation with regards to the circumstances leading up to the presentation of the winding up petition with particular regards to Article 13(1)(h) of the 1976 Order."

[47] The appellant rejects the contention that Article 13(1)(h) provides a sufficient basis, arguing that the respondent's reliance on this provision, in the absence of express reference to it by the Committee, constitutes *ex post facto* rationalisation. The appellant further submits that arguably, Article 13(1)(h) was engaged following the Society's letter in February 2019, however, the appellant has since provided explanations for his conduct to the Society which have been accepted and addressed through the imposition of disciplinary sanctions. Accordingly, it is submitted that it is unclear on what basis Article 13(1)(h) could still be engaged. To justify the imposition of conditions based on earlier conduct would, in the appellant's view, allow conditions to continue to be imposed for matters "of some vintage" which have been resolved.

[48] Having considered the competing argument I find as follows. First, as a matter of statutory interpretation the starting point is Article 14A(1). Plainly this provision confers broad discretion to direct that a solicitor's practice be subject to any terms and conditions "as the Council think fit." This is the statutory basis on foot of which conditions may be imposed by the Society.

[49] The discretion to act under Article 14A(1) is only triggered when the circumstances in Article 14A(2) are engaged. The latter provision does not provide the statutory power to impose terms and conditions on practising certificates on specific grounds contained therein *per se*. It must also be remembered that the discretion under Article 14A(1) must be exercised in accordance with the requirements of proportionality, taking into consideration the protection of the public and the interests of the individual solicitor. This analysis is not disputed by the parties. I will return to the issue of proportionality later.

[50] The disagreement between the parties only arises as to the effect of Article 14A(2)(a). The appellant's position is essentially that only the circumstances in Article 13(1), referred to in Article 14A(2)(a), can inform the proportionality analysis of the Committee who, then, must weigh only that factor against the against the risk to the protection of the public. For the appellant, the proportionality question should have been limited to whether the sum owed was sufficient on its own to justify the imposition of conditions.

[51] I prefer the respondent's position. If the appellant's interpretation is correct, it would generate an imbalanced proportionality equation and would confine the

proportionality assessment to a small, exhaustive list of factors which, in this case, would exclude consideration of the disciplinary history of the individual solicitor. This is not only inconsistent with the appellant's own admission that the respondent must assess the risk to the public interest, but it also unduly restricts the ability of the Society to perform its essential protective function to safeguard the reputation of the profession and adverse risk to clients.

[52] To my mind, Article 14A(2)(a) indicates that a decision under Article 14A(1) may be taken in respect of an individual solicitor where any of the relevant Article 13(1) provisions applies to him or her. This is reflected in the opening clause of sub-paragraph (a): "The power to give a direction … shall be exercisable by the Society at any time during the period … [where Article 13(1) (e), (g), (h), (hh), (i) or (j) has effect in relation to that person]." Put simply, Article 14A(2)(a) indicates when the discretion of the Society is engaged, not how it is to be exercised. The factors relevant to a decision taken under Article 14A(1) cannot be limited to consideration solely of the circumstances mentioned in Article 13(1) subparagraphs (e), (g), (h), (hh), (i) or (j); they are, of course, relevant to the overall evaluative task, but the discretionary power under Article 14A(1) encompasses consideration of a broader constellation of competing interests.

[53] This point is supported by the clear distinction between the roles of the Tribunal and the Society. As the respondent helpfully illustrates, the former is an independent tribunal which adjudicates on complaints by the Society arising from alleged breaches of the regulations governing solicitors' conduct and, if proven, imposes sanctions in accordance with Article 51 of the 1976 Order. The Society by contrast, pursuant to Part II of the 1976 Order, exercises its powers to supervise and regulate the profession including by the issue of practice certificates and the imposition of terms and conditions under Article 14A.

[54] Returning to *Solicitors (Northern Ireland) Order 1976, Re In the matter of a Solicitor* [2014] NIQB 46, Morgan LCJ drew a clear distinction between the discretionary power to regulate the profession by directing that a solicitor's practising certificate shall have effect subject to conditions and the function of the disciplinary Tribunal:

> "I accept that the task upon which the court is engaged in cases where the appeal is from a refusal to issue a practising certificate is different from the determination of an appeal from the Tribunal. In the first case the power to refuse the practising certificate is purely protective (see In re Crowley [1964] IR 106). The factors to be taken into account are the interests of the public, the interests of the profession, the interests of the clients of the solicitor in question and the interests of the solicitor himself f…
>
> [21] In an appeal from the Tribunal issues of protection remain relevant considerations. To these must be added

> the punishment of misconduct and the deterrence of repetition by others …" [emphasis added]

[55] Similarly, in *Re A Solicitor* [2001] NIQB 52 Carswell LCJ underlined the "function of protection of the public and the good name of the profession exercised by the Council of the Society in the issue of practising certificates." On the basis of these authorities the appellant's assertion that the Society's discretion is limited by Article 14A(2)(a) is unsupported.

[56] However, the central question remains whether the Committee acted on a lawful basis in imposing the impugned conditions. It is accepted that at least one of the grounds in Article 13(1) applied to the appellant: Article 13(1)(e). There is no dispute that the appellant has some outstanding liability in respect of sums owed to the Society. The argument raised on behalf the appellant in response is that the sum owed is modest and insufficient on its own to justify the imposition of practising certificate conditions.

[57] To my mind the amount in issue does not assist the appellant in his claim that the respondent acted on an unlawful basis. I am therefore satisfied that in exercising its discretion under Article 14A(1) the Committee acted on the appropriate legal basis as at least one of the circumstances mentioned in Article 14A(2)(a) applied to the appellant.

[58] I also accept the respondent's position that Article 13(1)(h) provides sufficient basis on foot of which the Committee is entitled to exercise its discretion. Whilst I acknowledge the appellant's submission that resolved matters of misconduct should not be held against him in perpetuity, a combined reading of Article 14A(2)(a) and Article 13(1)(h) does not, in my view, suggest that where parallel disciplinary proceedings have found that a solicitor failed to give an explanation for certain conduct and sanctions subsequently enforced, Article 13(1)(h) cannot be relied upon as a basis for engaging the discretion under Article 14A(1). This is because of the fundamental distinction between the Tribunal and the Society which I have already referenced. This ground of appeal must fail.

[59] Lest there be any residual concern in respect of what Mr Hamill calls "an ongoing sword of Damocles", I am satisfied that the appellant is protected by the requirement to render a decision which complies with the principle of proportionality, to which I now turn when dealing with the next ground of appeal.

Conclusion on Grounds (a), (c) and (g): The conditions imposed by the Appellate Committee are disproportionate; the decision was not taken in line with the principle of proportionality; and the Appellate Committee failed to have adequate regard for the Tribunal's findings

[60] Having dealt with the interpretation of Article 14A, this second issue resolves to a matter of judgment and weight. Mr Hamill argued that appellant has been subject

to significant restrictions on his ability to practise since 2018. He has also received sanctions imposed by the Tribunal consisting of an admonishment and a restriction on his ability to practise on his own account for a two-year period. The appellant points out that the latter expired in February 2023, and he has therefore "served his time." It is argued that his continued restriction through the imposition of new conditions goes further than is necessary to meet the competing interests of the individual solicitor and public protection. The appellant refers specifically to the criteria espoused by Lord Clyde in *De Freitas v Permanent Secretary* [1999] 1 AC 69, in particular, the third criteria, which requires that "the means used to impair the right or freedom are no more than is necessary to accomplish the objective."

[61] The appellant further contends that the Committee failed to have adequate regard for the Tribunal's findings. The thrust of this submission is that the appellant had served his time and as such, there was no longer any public interest in continuing to impose restrictions or conditions on his practising certificate.

[62] In reply the respondent submits that the Society, in the exercise of the wide discretionary power granted to it under Article 14A(1), removed all restrictions to the appellant's right to practice his profession and, having regard to its duty to protect the public, imposed the minimum conditions it considered necessary to do so. Mr Egan described the conditions as "very light touch" and submitted that they cannot, as a matter of law, be considered as wrong or unjust because of a serious procedural irregularity. In the respondent's view, the fact that the appellant disagrees with a decision of his professional regulator falls considerably short of the bar he must clear if this appeal is to succeed.

[63] Moreover, it is submitted by the respondent that the Committee are perfectly entitled to take the view that the appellant's disciplinary antecedents raise concerns as to his future conduct. If the appellant's submission is accepted by the court, it is contended, that it would preclude the future imposition of conditions by the Society where a sanction was previously imposed by the Tribunal, which cannot be correct in light of their different statutory objectives.

[64] I am not persuaded that there has been a disproportionate interference with the appellant's ability to practice. Having regard to the substance of the Committee's decision, the conditions imposed, the factual background and the submissions of the parties, the decision represents a finely balanced attempt to reintegrate the appellant into the legal profession. As a result of the Committee's decision the appellant is no longer subject to a restriction on his ability to practise on his own account or as a principal. This is a marked improvement to the appellant's professional circumstances and signifies a shift in the trust the Society are placing in the appellant moving forward. The removal of the restrictions also, to my mind, constitutes the clearest evidence that the respondent had due regard for the principle of proportionality and the requirement to go no further than necessary to protect the profession.

[65] Indeed, the conditions imposed, as accepted by Mr Hamill during argument, are "modest." They are aimed at ensuring that the appellant "has up to date and appropriate awareness of relevant financial and accounting regulations and that the [he] receives the same training as other assistants who become Principals." In weighing up the protection of the public and the appellant's individual interests, the Committee paid particular attention to the "serious" financial irregularities giving rise to the bankruptcy petition; the evidence of how the appellant conducted his business; and the absence of a track record of good financial conduct. I can find no reason to impugn the Committee's conclusion that these factors weigh heavily in the balancing of interests and that such a decision falls well within the broad parameters of the Society's discretion under Article 14A(1).

[66] I acknowledge that the appellant has already answered for his conduct by way of sanctions imposed through parallel disciplinary proceedings. However, it must be remembered that the Committee has a duty to consider the public interest. As the respondent notes, the PCC and Appellate Committee, "have as their focus the future regulation of the appellant's practice." The power to impose terms and conditions is a direct and distinct outworking of Society's regulatory function under the 1976 Order and this power, exercised by the PCC or Appellate Committee is not punitive, but protective.

[67] I also consider there to be some force in the respondent's submission that the appellant's argument begs the question whether any terms or conditions may be imposed following the expiry of disciplinary sanctions. It follows that even though the appellant's sanctions expired in February 2023 this cannot exclude consideration of the appellant's financial management of his previous practice as a relevant factor when exercising the Council's broad powers under Article 14A(1).

[68] In reaching this conclusion, I also bear in mind that weight must be given to the collective experience of the practitioners involved in the decision-making. That an appropriate degree of latitude is to be afforded when dealing with matters in the professional conduct arena is repeated time and time again in the relevant jurisprudence referred to above. Accordingly, in line with the legal test as agreed between the parties I do not consider that the respondent was wrong in finding that a proportionate balance was struck by imposing conditions on the appellant's practising certificate. This ground of appeal therefore fails.

Conclusion on Ground (d): The decision of the Appellate Committee was not adequately reasoned

[69] The appellant argues that the decision was not adequately reasoned because it was incumbent on the respondent to set out explicitly the basis upon which it imposed conditions and, by failing to do so, it is unclear why the conditions were imposed.

[70] The respondent replies that the failure to make express reference to particular statutory provisions does not amount to a decision which is wrong. In any case, the

respondent maintains that the decision records the reasons for the imposition of the conditions. In particular, the respondent notes the express references by the Committee to the appellant's failure to: (i) provide the Society with a satisfactory explanation of the circumstances leading to the presentation of the winding up petition – which is in fact contrary to Article 13(1)(h), and (ii) discharge all of the Tribunal's and Society's costs he was ordered to pay – which is in fact contrary to Article 13(1)(e).

[71] Properly analysed, this challenge rehearses much of the same ground already covered. It is the appellant's position that the discretion to impose terms and conditions is limited to consideration of Article 13(1)(e). As already indicated, the discretion to impose terms and conditions is broader once the provisions of Article 13(1), referred to in Article 14A(2)(a) are engaged. Crucially, it is conceded by the appellant that Article 13(1)(e) had effect in relation to the appellant. The outstanding liability is sufficient on its own to engage the discretion of the Committee under Article 14A(1). This is consistent with the approach taken by the Committee, as the following extract demonstrates:

> "While the outstanding balance due in relation to the Disciplinary Tribunal costs is relevant, the Appellate Committee also noted that in undertaking its exercise of balance and proportionality, as submitted by Mr Hamill, it is accepted on behalf of the Appellant that the context overall giving rise to this sequence of events before the Appellate Committee could not be ignored. The Appellate Committee consider that the operation of a law practice in circumstances where substantial sums became due to the Crown for self-assessments, for Capital taxes and for VAT is a serious matter and weighs heavily in the balancing of interests in terms of protection of the public and the interests of the Appellant."

I, therefore, dismiss this ground of appeal.

Ground (f): That the Appellate Committee failed to fully and properly engage with the appellant's submissions

[72] It is argued that the Committee failed to engage with the submissions made on behalf of the appellant and in particular to address points of procedural fairness and lack of reasons. The issue stems from the initial decision taken by the PCC to continue to impose restrictions on his ability to practice. The appellant avers that the letters to him from the Society simply told him what restrictions were being imposed without engaging with under what legislative provision that decision was taken, why it was considered necessary and what had been taken into account. The appellant complains that he has also requested the minutes of various meetings where decisions have been taken about him but has still not received those documents. As a consequence, the

appellant recorded that by not providing any ruling on these issues, he is left with "significant gaps in his understanding of the evolution of the decision making about him and the Society's rationale for same."

[73] The respondent submits that a proper reading of the Committee hearing transcript does not support this view. In any case, the respondent asserts that it is not necessary for the Committee to rule on every aspect of the case before them. Returning to the central question whether the decision was wrong or unjust because of serious procedural irregularity, the respondent argues that the decision cannot on any reasonable reading meet this high bar.

[74] The transcript of the Committee hearing is an important contextual starting point in determining this argument. From this I can see thar Mr Hamill addressed members of the panel on several issues and made detailed submissions on the lack of reasons provided by the PCC. The underlying principle identified by Mr Hamill with regard to the requirement to provide reasons was put as follows:

> "There is a requirement for reasons and that is not to suggest that anybody needs to be given chapter and verse and every single argument or point that is raised needs to be dealt with, but people do need to be able to understand what decision has been taken, what is the rationale for it [and] what has been relied upon."

[75] As a matter of general principle, a judicial or quasi-judicial decision maker does not have to rule on every aspect of the case before them. This point is accepted between the parties. What is important, however, is that the individual affected can understand how the decisions affecting him or her were reached. In this case the appellant also had the benefit of legal representatives.

[76] During the course of the hearing Mr Hamill submitted that "if there was an unfair procedure at first instance … that as a matter of law of course can be remedied by a fair hearing at second instance." This concession is referred to in the text of the impugned decision wherein it is stated that:

> "Mr Hamill accepted that while the absence of reasons might render the decision of the PCC procedurally unfair, it was possible for the Appellate Committee to make a new decision which could be procedurally fair and therefore the absence of procedural fairness at the stage of the PCC decision would not negate the ability of the Appellate Committee to impose conditions and would not, in effect, undermine the entirety of the decision-making process."

[77] It is also relevant that the statutory basis, on foot of which the conditions were imposed, is referred to in the text of the decision, albeit by way of responding to the appellant's submissions on the proper application of Article 14A:

> "The Appellate Committee had their attention drawn to section [sic] 14A of the Solicitors' (Northern Ireland) Order 1976 ('the Order'). In this section the Council of the Law Society were given the authority to impose terms and conditions on current and subsequent Practising Certificates."

[78] The ultimate question therefore arises – is the Committee's decision, the factors it took into account and rationale underpinning it, sufficiently clear? To my mind, it is. This conclusion follows inexorably from the decision itself, including the fact that the appellant succeeded before the Committee in having the restrictions removed, and the accompanying transcript that there was thorough engagement with, and examination of, the arguments raised on behalf of the appellant, from which the rationale underlying the decision is abundantly clear. Fundamentally, the decision makes clear that the conditions are necessary to safeguard the interests of the public having regard to the past track record of the appellant in financial matters. There is nothing wrong with that finding in the circumstances of this case and neither is the decision contaminated by serious procedural irregularity. Accordingly, this ground of appeal also fails.

Conclusion on Ground (h): The process was procedurally unfair

[79] The final ground of appeal alleges procedural unfairness in that the appellant makes the case that he had no opportunity to make representations about the new or alternative conditions which were ultimately imposed. It is also argued that it was not clear during the course of the hearing that the Appellate Committee were minded to impose different conditions.

[80] I can deal with this ground in short compass as follows. This argument is unsustainable given the extent of procedural irregularity required to meet the applicable test and the clear statutory language conferring an express power upon the Society to impose terms and conditions under Article 14A. The appellant was very clearly alive to the fact that such a discretion exists where the scenarios in Article 13(1) are in play; indeed, this was a central aspect of his case before this court and the Committee. Even taking the appellant's claim at face value, if the appellant was afforded an additional opportunity to make representations on the propriety of imposing alternative conditions the question would still resolve to an issue of proportionality and the result would be the same. This ground of appeal is dismissed.

Overall conclusion

[81] Accordingly, for the reasons I have given, the appeal is dismissed on all grounds. I will hear from the parties as to any matters that arise.